IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 32 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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BOARD OPINION - Petitioner(s)
Versus
MADHU TEXTILES A'BAD. LTD. & 7 - Respondent(s)

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Appearance :
BOARD OPINION for Petitioner No(s).: 1.
MR DS VASAVADA for Respondent No(s).: 1.
MR MK VAKHARIA for Respondent No(s).: 1.
NANAVATI & NANAVATI for Respondent No(s).: 1.
DELETED for Respondent No(s).: 2.
NOTICE SERVED for Respondent No(s).: 3.
SERVED BY RPAD - (N) for Respondent No(s).: 4, 7,8.
MR RM DESAI for Respondent No(s).: 5,7.
MR HM BHAGAT for Respondent No(s).: 6.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 17/08/2005

ORAL JUDGMENT

1.This petition has been registered on the basis of the opinion forwarded by the Board for Industrial & Financial Reconstruction (BIFR) on 22.02.2000 to the Registrar of this Court under Section 20 (1) of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) stating that on consideration of the facts of the case and the submissions made by the parties, the Board was of the view that the promoters were not serious in rehabilitating the Company nor were they resourceful enough to mobilize the funds required for this purpose. As such there was no rehabilitation proposal with means of finance fully tied up, for consideration of the Board despite ample opportunities having been given to all concerned. The Board, therefore, confirmed its prima facie opinion that the Sick Industrial Company was not likely to make its networth exceed its accumulated losses within a

reasonable time while meeting all its financial obligations and that the Company as a result thereof was not likely to become viable in future and hence, it was just, equitable and in public interest that the Company should be wound up under Section 20 (1) of the Act.

2.The notice was issued by this Court on 01.03.2000. However, during the pendency of this petition, the respondent Company has challenged the order of BIFR before the AAIFR being Appeal No. 76 of 2000. This Court has recorded in its order dated 05.04.2000 about filing of appeal by the respondent Company and the respondent Company was directed to produce entire record of the Appellate Authority. An affidavit-in-reply was filed on behalf of the respondent Company on 14.09.2000 wherein it is stated that the Company has put up the Scheme to rehabilitate under the Provisions of Section 391 of the Act. During the pendency of Scheme proceedings being Company Petition No. 245 of 2005, this Court has passed an order on 10.08.2004 directing

I.D.B.I., one of the Secured Creditors to publish the advertisement of the petition in “Indian Express” - English Daily & “Gujarat Samachar” - Gujarati Daily – both of Ahmedabad editions fixing the date of final hearing on 06.09.2004. Publication of advertisement in Official Gazette was dispensed with. The Court has, however, directed I.D.B.I. not to publish the advertisement till 17.08.2005.

3.On 17.08.2005, it has been mentioned by Mr. V.K. Bhatt, learned advocate appearing for M/s. Nanavati & Nanavati Associates for the respondent Company that a proposal for one time settlement has been forwarded by the respondent Company to I.D.B.I. and hence the order regarding publication of advertisement be stayed. However, the Court was of the view that other Secured Creditors are required to be heard before passing any order. Hence, the matter was kept on 19.08.2005. On that day, after hearing other Secured Creditors, the Court has observed that the Secured Creditors were not in

favour of acceptance of the proposal which was forwarded or yet to be forwarded by the respondent Company. Accordingly, IDBI was directed to comply with the order dated 10.08.2004.

4. During the pendency of the present petition, Company Petition No. 245 of 2002 whereby the respondent Company has proposed the Scheme was dismissed by this Court vide order dated 27.04.2005. The Court has observed in the said order that considering all the aspects of the matter, the Court was of the view that the Company was not viable and revival scheme proposed by the petitioner Company was nothing but merely an eye-wash and it was only with a view to buy time so as to dispose of the assets of the Company. There was no real motive to start the production and no material was produced before the Court so as to inspire the confidence of the Court that the Unit could work only if some indulgence was shown by the Court. The Court has observed that because of the pendency of the petition, the order regarding

advertisement was stayed. Since the Court has dismissed the said petition, I.D.B.I. Was directed to publish the advertisement as per the order passed by this Court on 10.08.2004.

5.The above order passed by this Court in Company Petition No. 245 of 2002 was challenged by the Company in O.J. Appeal No. 18 of 2005. The said appeal was also dismissed by the Division Bench of this Court on 28.06.2005 wherein it is held that in their considered opinion, a Scheme has to be examined by the Court and if the Court is of the opinion that the Scheme is viable, it can be put into action only then the Scheme would be accepted. Even otherwise, from the record, it would clearly appear that almost every Secured Creditor had made known his reservation in relation to the Scheme. The Court has further observed that the present was not a case where the Scheme was accepted. The appeal was, therefore, dismissed.

6.It was stated before the Court that the order

passed by the Division Bench was challenged before the Hon'ble Supreme Court by filing Special Leave Petition which was also dismissed by the Hon'ble Supreme Court.

7. In the above view of the matter, nothing remains in the matter and hence, the Court vide order dated 14.07.2005 directed I.D.B.I. to comply with the order dated 10.08.2004 and effect the publication of advertisement. Pursuant to the said order, I.D.B.I. has effected the publication of advertisement. Affidavit of publication was filed on 10.08.2005 along with which necessary newspaper cuttings were also attached.

8. After having heard learned advocates appearing for the respective parties and after having gone through the entire record of the case as well as the orders passed by this Court, Division Bench of this Court as well as the Hon'ble Supreme Court, the Court is of the view that the respondent Company is not at all viable and the dues of the

Workers as well as other Creditors are mounting up. Considering all these aspects of the matter, the Court is of the view that the respondent Company is required to be wound up. Accordingly, the respondent Company is hereby ordered to be wound up. The Official Liquidator attached to this Court is hereby appointed as the Liquidator of the Company and he is directed to take charge of the assets of the Company and is further directed to exercise all powers which are vested in him under the Provisions of Companies Act, 1956. The Official Liquidator is further directed to intimate to the Secured Creditors and Directors of the respondent Company at the time of taking possession. He is further directed to take sense of the Secured Creditors before deploying the Security Agency and/or Valuer for the purpose of taking inventory of the assets of the Company. He is further directed to invite claims from the Creditors as well as Workers and also intimate to the Ex-Directors of the Company to file Statement of Affairs.

9.With this direction, this petition is accordingly disposed of without any order as to costs.

[K.A. PUJ, J.]

Savariya